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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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8 K.S.,  
9 Plaintiff,  
10 v.  
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No. C 06-07218 SI

**ORDER RE: DISCOVERY**

12 FREMONT UNIFIED SCHOOL DISTRICT,  
13 Defendant.

14 Via letter brief, defendant Fremont Unified School District has filed a motion to compel or, in  
15 the alternative, to supplement the administrative record. For the following reasons, the Court GRANTS  
16 IN PART defendant's motion.

17 In this case, plaintiff seeks to reverse the decision of an Administrative Law Judge ("ALJ")  
18 regarding a special education matter. Apparently, portions of the administrative record from the hearing  
19 before the ALJ are missing. In particular, the testimony of Judith Paton (plaintiff's expert), and Linda  
20 Martinez (defendant's expert), are missing from the record. Fortunately, plaintiff independently  
21 recorded much of the hearing, including portions of the Paton and Martinez testimony. After learning  
22 of this, defendant informally and formally requested production of the recordings, and/or transcripts  
23 thereof. Plaintiff objected to defendant's requests, but ultimately produced a transcript of its recording  
24 of Paton's testimony. Defendant now moves to compel production of the Martinez recording, or a  
25 transcript thereof.<sup>1</sup>

26 This dispute is largely one of logistics and cost. Plaintiff argues that it cannot simply provide

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28 <sup>1</sup>It is unclear whether defendant seeks both the Martinez recording and the transcript, or whether either one would suffice.

1 defendant with the audio recording because: (1) the audio recording will be difficult to extract from its  
2 location on plaintiff's small server; and (2) the recording captured privileged communications among  
3 those sitting at plaintiff's table during the hearing. The Court shares plaintiff's concern with turning  
4 over recordings of privileged communications, and therefore ORDERS plaintiff to provide defendant  
5 with a transcript of the Martinez testimony, as captured on the recording, without transcription of any  
6 communication between those seated at plaintiff's table. Defendant shall bear the cost of transcribing  
7 the Martinez testimony.<sup>2</sup> The Court DENIES the parties' motions for sanctions, and DENIES AS  
8 MOOT defendant's motion to supplement the administrative record. The Court also DENIES  
9 defendant's request for a copy of the recordings with which to verify the accuracy of the transcripts.  
10 The Court assumes that the transcriber will provide the parties with verification of the accuracy of the  
11 transcripts.

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13 **IT IS SO ORDERED.**

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15 Dated: July 31 , 2007

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SUSAN ILLSTON  
United States District Judge

25 <sup>2</sup>Defendant already offered to bear the cost of transcribing the Martinez testimony. Plaintiff  
26 insisted that defendant also pay for transcription of the Paton testimony. Considering that plaintiff has  
27 already voluntarily transcribed the recording of Paton's testimony (presumably because, as their expert,  
28 Paton gave valuable testimony that plaintiff wishes to be part of the record in this Court), the Court will  
not require defendant to pay for transcription of the Paton testimony. The gaps in the administrative  
record would disadvantage both parties, and the relevant statute does not specify whose burden it is to  
supply and pay for the administrative record. As such, it is just that the parties share the cost of filling  
in gaps in the record.